

## **PART 6      ALLEGATIONS OF QUID PRO QUOS**

### **Chapter 35: Secretary Babbitt and the Hudson Casino**

On October 30, 1997, the Committee took testimony from Secretary of the Interior Bruce Babbitt and Paul Eckstein, an attorney-lobbyist from Phoenix, Arizona. Eckstein is a former law school classmate and law partner of Secretary Babbitt's. At issue was the July 14, 1995, decision by the Department of the Interior ("Interior") denying the request of three northern Wisconsin Indian tribes that the United States take land in the western Wisconsin city of Hudson "into trust." The tribes made this request to enable them and their partner, Galaxy Gaming, Inc., to open a casino at a failing greyhound track owned by Galaxy Gaming that was located on the proposed trust site. Eckstein, hired as a lobbyist for the applicants, spoke with Secretary Babbitt concerning the trust application on several occasions between April and July 1995, including a conversation with Babbitt on July 14, 1995 -- the day Interior issued the decision denying the application. During that conversation, according to Eckstein, Secretary Babbitt declined to delay the issuance of the decision because Deputy White House Chief of Staff Harold Ickes had instructed him to issue the decision that day. During his testimony before the Committee, Secretary Babbitt sought to explain apparent contradictions between accounts he had given of this conversation in two separate letters to Sen. McCain and Chairman Thompson. On February 11, 1998, Attorney General Reno petitioned for the appointment of an independent counsel to investigate whether Secretary Babbitt "committed a violation of federal criminal law in connection with his sworn testimony" before this Committee.<sup>1</sup>

### **FINDINGS**

**(1) The evidence before the Committee supports the conclusion that Secretary Babbitt did not act improperly with respect to the Department of Interior's decision to deny the Hudson trust application.** The evidence shows that Secretary Babbitt played no role in the Hudson trust decision, that he did not hear from, or talk to, Harold Ickes about the decision, and that the Interior officials who recommended denying the trust application had no knowledge of either campaign contributions by the opposing tribes or the alleged "pressure" from the White House or the DNC to deny the trust application.

**(2) However, Secretary Babbitt's actions with respect to Eckstein, his letters to Senators McCain and Thompson, and his testimony to this Committee regarding his conversations with Eckstein were confusing. Secretary Babbitt's letter to Senator McCain omitted the fact that Secretary Babbitt had invoked Ickes' name to Eckstein even though that allegation was at the center of Senator McCain's earlier letter to Secretary Babbitt.** The Secretary's subsequent letter to Senator Thompson acknowledged that he did invoke Ickes' name with Eckstein, but said that he did so only as a means to terminate his conversation with Eckstein. Secretary Babbitt then testified to this

Committee that, even though he had not spoken to Ickes about the trust application, he did not technically mislead Eckstein when invoking Ickes' name because the White House naturally wanted him to issue decisions in a timely way. These statements, when taken together, are confusing, but they are not directly inconsistent with the facts.

## **OVERVIEW**

The St. Croix Meadows Greyhound Racing Track (“the dog track”) is located in Hudson, Wisconsin, a small city near the border of Wisconsin and Minnesota, approximately 25 miles east of Minneapolis. Three northern Wisconsin Indian tribes, the Lac Courte Oreilles Chippewa, the Red Cliffe Chippewa, and the Sokaogon Chippewa, and their partner, Galaxy Casinos, Inc., formed the Four Feathers Casino Joint Venture (“Four Feathers”) in early 1993 in order to open a gaming facility at the dog track. The Lac Courte Oreilles Chippewa reservation, located 85 miles from the greyhound racetrack, is the closest of the three tribes’ reservations to Hudson.

In November 1994, the partnership gained the recommendation of the Minneapolis regional office of the Bureau of Indian Affairs (“BIA”) that the Interior Department take the dog track into trust on behalf of the three tribes and approve the opening of a casino at the dog track. However, the Washington headquarters of BIA, after performing further evaluation of the proposal, recommended that this request be denied. Pursuant to the recommendation of BIA’s gaming staff, Deputy Assistant Secretary for Indian Affairs Michael Anderson denied the request in a letter dated July 14, 1995.

Four Feathers subsequently filed suit in U.S. District Court in the Western District of Wisconsin, claiming that the request that the dog track be taken into trust was denied by Interior because of “improper political pressure” placed on the department by White House Deputy Chief of Staff Harold Ickes, DNC Chairman Donald Fowler, and others closely connected to the national Democratic Party.

## **SECRETARY BABBITT’S REMARKS TO LOBBYIST ECKSTEIN**

The primary evidence of supposed political “interference” in Interior’s decision to deny the Hudson casino proposal are remarks attributed to Secretary Babbitt by Eckstein during the course of a last-ditch, unsuccessful appeal by Eckstein for Interior to delay the issuance of its denial letter. Given the issues that have been raised concerning the timing of some of Eckstein’s revelations and the consistency of Secretary Babbitt’s statements, the history of how these allegations came to light merits close scrutiny.

### **Eckstein’s Affidavit**

During the course of the litigation, the tribes filed a motion to expand discovery beyond the administrative record compiled by Interior, arguing that the evidence of improper political

pressure justified plaintiffs' request for discovery into the reasons for Interior's decision. In support of that motion, the tribes filed the affidavit of Paul Eckstein, a lawyer-lobbyist hired by the tribes who recounted his involvement in the Hudson casino matter in extensive detail. Included in this affidavit was the allegation that Secretary Babbitt told him on the day the application was rejected "that the decision could not be delayed because Presidential Deputy Chief of Staff Harold Ickes had called the Secretary and told him that the decision had to be issued that day."<sup>2</sup>

### **Secretary Babbitt's Letter to Senator McCain**

Notwithstanding these allegations, the U.S. District Court denied the applicants' request to take discovery outside the administrative record. The Wall Street Journal published an article on July 12, 1996, reporting on the contents of Eckstein's affidavit concerning the Ickes comment and the plaintiffs' allegations that the Interior Department denied the Hudson casino application because of White House pressure. After reading the Wall Street Journal article, Senator John McCain, Chairman of the Indian Affairs Committee, wrote to Secretary Babbitt to ask him about the veracity of the allegations contained in the article.<sup>3</sup> Specifically, Senator McCain asked Secretary Babbitt whether it was true "that you told Eckstein that Ickes had called you and told you the decision in favor of Mr. O'Connor's client tribes had to be issued that day without delay."<sup>4</sup> Secretary Babbitt, in a letter dated August 30, 1996, responded to that specific inquiry as follows:

I must regretfully dispute Mr. Eckstein's assertion that I told him that Mr. Ickes instructed me to issue a decision on this matter without delay. I never discussed the matter with Mr. Ickes; he never gave me any instructions as to what this Department's decision should be, nor when it should be made.<sup>5</sup>

### **Eckstein's Deposition**

In his deposition to this Committee on September 30, 1997, Eckstein significantly expanded on his affidavit testimony concerning his July 14 conversation with Secretary Babbitt. Specifically, Eckstein alleged that at the end of their July 14, 1995, conversation, he objected to a letter that he had seen from Patrick O'Connor, a lobbyist representing neighboring tribes opposed to the Hudson casino, to Harold Ickes. This letter requested assistance in receiving an unredacted copy of an Arthur Andersen report commissioned by the tribal applicants which found that the proposed casino would have no adverse financial impact on the neighboring tribes with existing casinos. In addition, the letter alleged, incorrectly, that the greyhound race track on the proposed trust site was owned by a Buffalo, NY company called Delaware North, which supposedly enjoyed the support of Senator Alfonse D'Amato (R-N.Y.).<sup>6</sup> The letter also mentioned that the leader of one of the applicant tribes was active in Republican party politics and that the opposing tribes had been financial supporters of the DNC and the 1992 Clinton-Gore campaign.<sup>7</sup> Eckstein recalled that he objected to the contents of the letter, specifically the allegations concerning Delaware North and the party affiliation of the chairman of the lead applicant tribe.<sup>8</sup> Although Secretary Babbitt did not indicate to Eckstein that he had seen the O'Connor letter, Eckstein

claimed that at some point after he raised the issue of the O'Connor letter, Secretary Babbitt asked him rhetorically, "Do you know how much ... 'these tribes' ... had contributed to either the Democratic party or Democratic candidates or the DNC." Eckstein alleges that Secretary Babbitt then answered his own rhetorical question by remarking, "Well, it's on the order of half a million dollars, something like that."<sup>9</sup>

### **Secretary Babbitt's Letter to Chairman Thompson**

On October 8, approximately one week after Eckstein's deposition, Eckstein's confidential deposition testimony concerning the remarks attributed to Secretary Babbitt were the subject of news reports by the Minneapolis Star Tribune, the Wisconsin State Journal and the NBC Nightly News.

In response to the request of the Committee that he submit to a deposition, Secretary Babbitt wrote to Chairman Thompson and explained that he would not appear for a deposition due to press leaks of the Eckstein deposition but that he was willing to testify voluntarily before the Committee. Secretary Babbitt reiterated in this letter that Ickes never instructed him in any way on the Hudson matter and offered the following elaboration on his earlier statement to Senator McCain concerning his conversation with Eckstein:

I do believe that Mr. Eckstein's recollection that I said something to the effect that Mr. Ickes wanted a decision is correct. Mr. Eckstein was extremely persistent in our meeting, and I used this phrase simply as a means of terminating the discussion and getting him out the door. It was not the first time that I have dealt with lobbyists by stating that the Administration expects me to use my good judgment to resolve controversial matters in a timely fashion, nor do I expect it to be the last.<sup>10</sup>

### **Secretary Babbitt's Hearing Testimony**

During his hearing testimony, Secretary Babbitt consistently disputed two key elements of the "Ickes comment" attributed to him by Eckstein. First, Secretary Babbitt denied ever making a reference to Ickes "instructing" or "ordering" him to do anything with respect to the Hudson casino proposal. More substantively, Secretary Babbitt denied ever speaking with "Harold Ickes or anyone else at the White House" or with "Donald Fowler or anyone else at the Democratic National Committee" concerning the Hudson casino proposal.<sup>11</sup> Instead, Secretary Babbitt allowed that he may have made a reference to Ickes, who was the Department's point of contact with the White House on many matters, as "wanting" or "expecting" prompt action on the Hudson casino proposal. Secretary Babbitt explained that his general references to Ickes' expectations was meant to convey to Eckstein that "this decision has got to be made. It is overdue, and now is the time to make it."<sup>12</sup> Secretary Babbitt testified that he hoped the reference to Ickes would allow him to end the discussion and "express in a way some sympathy toward his point of view."<sup>13</sup> Although Secretary Babbitt testified that he had had no contacts with Ickes concerning the Hudson casino matter, he disagreed with the suggestion that his general reference

to Ickes misled Eckstein, arguing that “I think it’s fair to say that my superiors expect me to make decisions.”<sup>14</sup>

Second, Secretary Babbitt denied that he ever characterized Ickes’ generic expectations of Interior to include issuance of a denial of the Hudson casino proposal on the day of his conversation with Eckstein. The following colloquy between Chairman Thompson and Secretary Babbitt captures the two essential points of Secretary Babbitt’s differences with Eckstein:

Secretary Babbitt: [I]t is my recollection that I may well have said to him, Mr. Ickes expects me to make a decision or Mr. Ickes wants me to make a decision.

\* \* \* \*

Chairman Thompson: Could you have said that Mr. Ickes wanted you to make the decision that very day?

Secretary Babbitt: No, sir.

Chairman Thompson: You definitely remember you did not say that?

Secretary Babbitt: I do, and I represented that much in my letter to Senator McCain.<sup>15</sup>

Secretary Babbitt was definite in his recollection that, although he might have generally suggested that Ickes “wanted” or “expected” a decision to be issued “promptly” or “without delay,” he would not have told Eckstein that Ickes wanted a decision on that particular day. This is unsurprising in light of Secretary Babbitt’s testimony that he never discussed the matter with Ickes, therefore making it impossible for Ickes to suggest a particular date for the decision. When Senator Collins reformulated Thompson’s inquiry to ask whether Secretary Babbitt’s general reference to Ickes might have been to the effect that Ickes had “instructed” Secretary Babbitt to promptly deny the trust application, Secretary Babbitt again denied that he could have made any reference to an “instruction” from Ickes.

Secretary Babbitt: I think my response to Senator McCain to this question, were there -- did you have communications with the White House or Harold Ickes, and the response is I dispute any assertion that there were such contacts or instructions because there were not.

Senator Collins: I agree that your letter clearly says that there was not contact for Mr. Ickes, but it also clearly says, “I must regretfully dispute Mr. Eckstein’s assertion that I told him that Mr. Ickes instructed me to issue a decision in this matter without delay.”

Secretary Babbitt: . . . I didn’t tell Mr. Eckstein that.

Senator Collins: . . . What part isn’t true? The “without delay” part?

Secretary Babbitt: I did not tell Mr. Eckstein that Mr. Ickes had instructed me to make a decision.<sup>16</sup>

Secretary Babbitt defended the accuracy of his response to Senator McCain’s inquiry about his conversation with Eckstein, pointing out that Senator McCain’s main concern was whether Harold Ickes had given him instructions concerning the Hudson casino matter. Secretary

Babbitt responded to Senator McCain's specific inquiry by stating that he had never told Eckstein that Ickes had instructed him to issue a decision that day. Secretary Babbitt's letter immediately goes on, however, to specifically address the underlying issue of improper political pressure from the White House on a pending policy matter. "I never discussed the matter with Mr. Ickes; he never gave me any instructions as to what this Department's decision should be, nor when it should be made."<sup>17</sup> Secretary Babbitt's testimony confirms that his focus in responding to Senator McCain's inquiry was the contention that the White House had directed Interior to deny the Hudson casino proposal.

Part of the confusion surrounding Secretary Babbitt's statements arises from the fact that, in his letter to Thompson, he stated that he believed Eckstein's recollection to be "correct," whereas he had "regretfully dispute[d]" Eckstein's statements in his letter to Senator McCain. Secretary Babbitt's letter to Thompson characterizes Eckstein's recollection very broadly, however, as "something to the effect that Mr. Ickes wanted a decision."<sup>18</sup> The substance of the statements contained in the two letters are consistent. In the first letter to McCain, Secretary Babbitt denied a specific allegation that he told Eckstein that Ickes had instructed him to issue a decision that day. In the second letter to Thompson, Secretary Babbitt confirms that Ickes did not direct him to issue a decision but offers his recollection of what was actually said by him with reference to Ickes. As Secretary Babbitt testified, "I believe those statements are consistent. They both reflect my best recollection of what I said and what I didn't say."<sup>19</sup> Nevertheless, Secretary Babbitt might have avoided creating the initial confusion if the more expansive account of his reference to Ickes had been offered in response to Senator McCain's original inquiry.

### **ECKSTEIN'S ALLEGATIONS**

Secretary Babbitt testified that he had no recollection of any discussions with Eckstein concerning the O'Connor letter or campaign contributions by the Indian tribes as alleged by Eckstein.<sup>20</sup> The first time Eckstein alleged on the record that Secretary Babbitt had commented during their July 14, 1995, meeting about campaign contributions was in his deposition before the Committee on September 20, 1997. This was more than two years after Interior's denial of the Hudson application. During that two-year period, Eckstein's client had filed suit in federal court claiming that the denial decision was politically influenced. To prove political influence, Eckstein's client filed a motion for discovery, which motion was supported in large part by an affidavit from Eckstein describing his conversation in July 1995 with Secretary Babbitt.<sup>21</sup> Nowhere in that affidavit does Eckstein mention the alleged comment by Secretary Babbitt about campaign contributions.<sup>22</sup> Nor did Eckstein seek to amend his affidavit to include such allegations even when U.S. District Judge Barbara Crabb denied the initial motion.

Senator Richard Durbin questioned Eckstein on this failure to include the contributions statement in his affidavit and underlined the difficulty faced by the Committee in reconciling Eckstein's allegations with his affidavit.<sup>23</sup>

Here you are, the attorney for the losing Indian tribes in this case. They are now going to court to try to reverse the Department's decision. You have joined in an

effort to help them by signing a sworn affidavit, and you leave out one of the most critical questions and pieces of evidence that's being considered by this Committee."<sup>24</sup>

Eckstein testified in his deposition that he did not include any reference to Secretary Babbitt's alleged comment about campaign contributions by the tribes in his affidavit to the court because "I didn't want to put it in."<sup>25</sup>

The Minority could find no credible evidence that Eckstein ever told anyone off the record about Secretary Babbitt's alleged campaign contributions comment prior to his deposition before the Committee. Eckstein claimed that he told casino publicist Mark Goff about the alleged comment immediately after Eckstein's July 14 meeting with the Secretary.<sup>26</sup> And Eckstein claims he also may have told former Congressman Jim Moody, another lobbyist for the tribes, as well as Fred Havenick, the head of Galaxy Gaming.<sup>27</sup> But despite two years of comments by both sides about the case to the press, the Minority could find no public comment by anyone, including Goff, Moody and Havenick that ever mentioned the alleged contributions comment by Secretary Babbitt.<sup>28</sup> In fact, when Eckstein's deposition was leaked to the news media in October 1997, Goff was quoted as stating, "We consider this report to be the biggest piece of news in two years."<sup>29</sup> During their investigation, the Majority did not take the sworn testimony of Goff, Moody or Havenick. And in an interview with Committee staff, George Newago, the former chairman of one of the applicant tribes, stated that he had never heard about Secretary Babbitt's alleged comments concerning contributions prior to October 1997.<sup>30</sup> These facts call into question Eckstein's credibility on the other matters to which he testified. As Senator Torricelli pointed out, these circumstances engender considerable skepticism about the veracity of this part of Eckstein's testimony:

[T]his Committee really is left with nothing other than . . . Babbitt's failure to recollect it and a recollection which seems to have come to you without any contemporaneous affirmation for a considerable period of time. . . . I think you'd have to concede to me that [given the evidence] . . . you would at least be very unclear about the state of the circumstances . . .<sup>31</sup>

The Justice Department's preliminary investigation into these allegations confirmed that "Eckstein's allegations that Secretary Babbitt commented about Indian contributions was first made public in October, 1997, more than two years after the conversation occurred."<sup>32</sup> Although Attorney General Reno eventually petitioned for the appointment of an independent counsel to investigate Secretary Babbitt's account of his reference to Harold Ickes, the Justice Department's investigation "developed no evidence that Secretary Babbitt testified falsely when he stated that he does not recall whether he commented that Indian tribes had contributed approximately half a million dollars to the Democratic National Committee or other entities."<sup>33</sup> Attorney General also concluded that "no further investigation is warranted with respect to the perjury in connection with Secretary Babbitt's stated failure to recall his alleged comment about political contributions by Indian tribes."<sup>34</sup>

## **ECKSTEIN'S INTERPRETATION**

Even if Eckstein's allegations are fully credited, Eckstein himself did not understand the comments he ascribed to Secretary Babbitt to signify that the casino proposal had been denied due to political pressure from the White House or the DNC. Specifically, Eckstein testified that he did not understand Secretary Babbitt's reference to Ickes's desire for a prompt decision during their July 14, 1995, meeting to mean that the White House had directed Interior as to the substance of the Hudson decision.<sup>35</sup> Instead, Eckstein testified that his understanding of the comments he ascribed to Secretary Babbitt was that the White House had, at the most, pressured Interior as to the "timing" of the issuance of the decision.<sup>36</sup> Likewise, when pressed for his understanding of the remarks concerning contributions by Indian tribes which Eckstein ascribed to Secretary Babbitt, Eckstein testified that he did not interpret the remark to suggest that contributions by the tribes opposing the application had determined the outcome of the agency's decision.<sup>37</sup>

## **SECRETARY BABBITT AND LOBBYISTS FOR THE OPPOSING TRIBES**

O'Connor, one of the lobbyists for the opposing tribes, has testified that, while he has met Secretary Babbitt on several occasions and has spoken with him concerning other matters during his tenure as secretary, they never spoke about the Hudson casino.<sup>38</sup> Secretary Babbitt corroborated this recollection in his hearing testimony.<sup>39</sup>

Secretary Babbitt also testified that he does not recall ever seeing the May 8, 1995, letter O'Connor sent to Harold Ickes urging support for his clients' position until well after the July 14, 1995, decision was rendered.<sup>40</sup> John Duffy also does not recall seeing the O'Connor letter prior to commencement of the federal court litigation in Wisconsin in the fall of 1995.<sup>41</sup> Documents produced by Interior confirm that they did not receive the letter until November 9, 1995, when an assistant U.S. attorney from the Western District of Wisconsin faxed the letter to the Office of the Secretary, following commencement of the litigation.<sup>42</sup>

O'Connor's sole contact with the Department of the Interior occurred in March 1995, when he met with Secretary Babbitt's chief of staff, Tom Collier, and John Duffy's special assistant, Heather Sibbison. Sibbison, who did not recall O'Connor's name, said she and Collier met with a lobbyist who requested that Interior delay its decision until the opponents of the Four Feathers project could submit an economic impact study demonstrating the detrimental impact the Hudson casino would have on their tribes.<sup>43</sup> Collier recalled that he was asked to attend the meeting at the last minute.<sup>44</sup> He also recalled that O'Connor's major concern was that Interior delay the decision until after his clients could submit their report, which would be by the end of April 1995. Collier testified that -- either when O'Connor was still in the room, or directly after he left -- Collier called the Indian Gaming Management Staff office to ask about O'Connor's request. A staff member said that the office would not reach its decision until after the end of April, and thus the office did not object to keeping the record open for additional public comment until that time.<sup>45</sup>



No career or political appointees from Interior recall any further meetings or telephone conversations with O'Connor or any of his lobbying partners concerning the Hudson casino matter after the March 1995 meeting between Collier, Sibbison, and O'Connor. The only request made by the tribes opposing the casino proposal was that they be allowed to submit additional comments concerning the detrimental impact the proposal would have on their on-reservation casinos that employ hundreds of Native Americans. Interior's accommodation of this request was entirely appropriate and consistent with Departmental procedures. In summary, Secretary Babbitt met personally only with the supporters of the Hudson casino proposal and never met once with the lobbyists hired by the casino's opponents.

### **ROLE OF THE WHITE HOUSE**

Much has been made of the allegation that the White House directed Interior to deny the Hudson application at the urging of lobbyists for the tribes and the DNC. However, the Minority found no evidence that White House personnel attempted to influence the timing or substance of Interior's decision in this matter. Instead, the only contacts between the White House and Interior concerning the Hudson casino proposal were status reports relayed from Interior staffers to junior White House staffers.

#### **Lobbyist Contacts with Harold Ickes**

O'Connor and his lobbying colleagues did make numerous attempts to convince Ickes to get involved in advocating on behalf of the opponents of the Hudson casino. First, Ickes and O'Connor apparently exchanged several telephone messages on April 25 and 26, 1995, but O'Connor testified that they never actually spoke with one another during that period.<sup>46</sup> Ickes testified that, to his recollection, he never met with O'Connor nor any representatives of the tribes.<sup>47</sup> Next, O'Connor, his Native American colleague Larry Kitto, and several tribal leaders met with DNC Chairman Fowler on April 28, 1995, and told him about their concerns about the Hudson proposal.<sup>48</sup> As a result, Fowler said he talked to Ickes on the telephone about the tribes' concerns and wrote Ickes a follow-up memo concerning what these "DNC supporters" had emphasized in their meeting.<sup>49</sup>

Patrick O'Connor followed up Fowler's efforts with his own letter to Ickes, dated May 8, 1995, in which he unjustifiably claimed that the Hudson casino proposal was a partisan wedge issue in which Democrats opposed the proposal, and Republicans favored it.<sup>50</sup> In addition, one of O'Connor's Washington-based law partners, Tom Schneider, mentioned O'Connor's concerns regarding Hudson to Ickes at a DNC fundraiser on May 14, 1995, and Schneider said Ickes told Schneider, "I'll follow through on it."<sup>51</sup>

O'Connor's datebook entries corroborate that he was unsuccessful in scheduling a White House meeting to present his clients' concerns. Entries for May 15, 17, 19, and 24 indicate that O'Connor's clients asked him about setting up a meeting with Ickes on each of those dates.<sup>52</sup> The datebook reflects that, on the evening of May 24, O'Connor attended an event for the Vice

President at which he mentioned to Peter Knight, a lobbyist and former campaign manager for then-Senator Al Gore in 1992, and David Strauss, Vice President Gore's deputy chief of staff, his problems with the Hudson casino.<sup>53</sup> On June 6, 1995, the datebook also reflects that he mentioned to Clinton/Gore Finance Chair Terry McAuliffe that he wanted to set up a meeting with Ickes.<sup>54</sup>

The failure of O'Connor to arrange a meeting with Ickes is not surprising, given the memo sent to Ickes by Loretta Avent of the White House Office of Intergovernmental Affairs on April 24, 1995. In this memo, Avent, who handled relations with Indian tribes for the White House, recounted that she had been contacted that day by Bruce Lindsey concerning why she hadn't returned a telephone call from Patrick O'Connor. In her memo to Ickes, Avent emphasized that it was White House policy not to communicate with lawyers or lobbyists for Indian tribes but rather to deal directly with the tribal chairpersons as governmental leaders. She emphasized that, because Indian gaming is an area rife with controversy, it was best for the White House to stay as far as possible from involvement with the issue.<sup>55</sup>

### **White House Requested Status Report from Interior**

Shortly thereafter, Ickes asked Jennifer O'Connor, a staff assistant, to find out the status of the Hudson casino issue.<sup>56</sup> Jennifer O'Connor wrote a memorandum to Ickes on May 18, 1995, in which she reported that Interior was in the process of making a decision and that the application was likely to be denied. Ickes testified that it was his responsibility to become aware of issues in a particular inquiry and then make a decision about whether he should become involved. When Ickes found out that Interior was handling the matter, he testified that "the best of my recollection is I think that was the end of it as far as my office was concerned."<sup>57</sup>

Jennifer O'Connor testified that she contacted the office of John Duffy and spoke with Heather Sibbison, Duffy's special assistant; she has no recollection of speaking with anyone else at Interior concerning the status of the Hudson casino.<sup>58</sup> Ms. O'Connor testified that, whenever she made a status inquiry of an agency about a policy matter, she would start "with a disclaimer that roughly said, you know, I'm looking for a status, I don't want you to tell me anything I'm not supposed to know, I don't want to influence anything, so just tell me what you can about this issue."<sup>59</sup> She recalled Sibbison's comments as follows:

And she sort of explained the context of it, that a tribe wanted the Department of the Interior to approve their ability to turn a dog track into a casino, and that the community where the dog track was [located] was pretty universally united against it and that they were in the process of making a decision on it and hearing from members of Congress and community leaders and governors, and you name them, everybody seemed to have an opinion on it; and that the department was not yet done with its decision-making process, but she--it was her personal opinion that based on all of the negative information they were getting from communities that they were most likely going to eventually deny it. And I think she told me that none of this was public. I think that's about the extent of the conversation.<sup>60</sup>

Jennifer O'Connor wrote a May 18, 1995, memo to Ickes that summarized the status of the Hudson casino issue at the Interior Department. She verified in her deposition that the information must have come about as a result of the conversation she remembers having with Sibbison.<sup>61</sup> In the memo, O'Connor states that the Interior staff had met on the issue "last night" and had come up with a preliminary decision to deny the application. According to this memo, Interior's decision was likely to be based upon the following factors:

- O the applicant tribes' existing reservations were located far from the proposed casino site;
- O the local officials in Hudson and the local (Republican) Congressman Gunderson opposed the project based upon concerns that it would have an adverse impact on the local community;
- O the Minnesota congressional delegation opposed it because of the negative impact upon on-reservation gaming facilities of tribes located near Hudson in eastern Minnesota; and
- O "It is likely that a decision to approve this proposal would result in a spotlight being shone on the Indian Gaming Regulatory Act, which is under some legislative pressure at the moment. The Department wants to avoid this kind of negative attention to the Act."

The memorandum reflects that Interior staff were aware of the possible influence of the "bigger lobbyists" of the wealthier tribes influencing the process, but thought that such concerns did not negate "the uniform opposition from the local community." The bottom line is a status report: "the Department is reviewing the comments received during the comment period which ended April 30. It has committed to making a final decision within a month."<sup>62</sup>

### **White House Requested Second Status Report from Interior**

A fax sent from Patrick O'Connor to Ickes's office on June 1, 1995, attached a newspaper article from a Madison, Wisconsin, newspaper discussing another Wisconsin dog track near Madison that was being purchased for conversion to an off-reservation Indian casino.<sup>63</sup> In his fax cover sheet, O'Connor made the point that allowing the Hudson casino to go forward would be a bad precedent concerning off-reservation casinos, as was indicated by the fact that other tribes were going forward with similar proposals right in Wisconsin.<sup>64</sup> Jennifer O'Connor did not recall reading the article attached to this fax.<sup>65</sup> She did recall John Sutton, a staff person in Ickes's office, passing the fax cover sheet to her and asking if she wanted to meet with Patrick O'Connor.<sup>66</sup> Ms. O'Connor testified that she never met with Patrick O'Connor at any time.<sup>67</sup> Ms. O'Connor subsequently asked an intern in her office, David Meyers, to call Sibbison to find out whether Interior had announced a decision concerning the casino.<sup>68</sup>

Meyers contacted Sibbison and wrote a memo to Jennifer O'Connor on June 6, 1995, recounting the conversation between himself and Sibbison. He confirmed that Interior would make an announcement concerning the Hudson matter in the next two weeks and that the

department was 95 percent certain that the application would be turned down.

She [Sibbison] explained that there is significant local opposition. Much of the opposition, however, is a by-product of wealthier tribes lobbying against the application. Therefore, they still want to receive public comment in making a fair determination regarding the application. . . . [S]he stated that they will probably decline without offering much explanation, because of their ‘discretion’ in this matter. She asked that if you have any feedback please call her with your thoughts.<sup>69</sup>

Ms. O’Connor was confident that she never shared her thoughts on the issue with Sibbison, stating, “I had no need to because they were about to make a decision, they were about to turn it down. I had no reason to think there was anything wrong with that.”<sup>70</sup>

### **White House and Interior Confer on Response to Congressional Inquiry**

On June 26, 1997, Jennifer O’Connor faxed to Heather Sibbison a copy of a June 12 letter from Minnesota’s Democratic congressional delegation to Ickes opposing the trust acquisition, expalining the grounds for their opposition, and asking him to explain their concerns to Secretary Babbitt.<sup>71</sup> On the accompanying fax sheet contains, Ms. O’Connor requests that Sibbison “[p]lease have someone draft a response.”<sup>72</sup> On June 27, 1995, Sibbison faxed Ms. O’Connor draft responses.<sup>73</sup> The accompanying cover memo from Sibbison to O’Connor explained that, in light of the fact that the Department’s decision to deny the trust acquisition proposal might be made later that week, Sibbison drafted two letters.<sup>74</sup> The first draft could be sent immediately acknowledging the concerns expressed by the congressional delegation and advising them that the issue was still under consideration.<sup>75</sup> The other draft contemplated that the decision denying the application had already been released and simply advised the congressional delegation of that fact.<sup>76</sup> O’Connor’s recollection of her response, which is supported by a note she wrote on the cover page of Sibbison’s return fax, was that she decided to send neither letter and simply asked Interior to respond on behalf of the White House.<sup>77</sup>

In summary, when Jennifer O’Connor first contacted Secretary Babbitt’s office on behalf of Ickes, Heather Sibbison told her that Interior was likely to deny the application, and Ms. O’Connor’s contemporaneous memo demonstrates that the reasons for denial that Sibbison referred to were similar to those actually used by Michael Anderson in his July 14, 1995 denial letter. Subsequent contacts between the White House and Interior were routine and non-substantive. There is no evidence that the White House influenced the substance of the decision.

### **Other Interior and White House Contacts**

Secretary Babbitt testified that he had no contact with any White House staff, elected officials, or DNC personnel concerning the Hudson casino proposal.<sup>78</sup> Although Secretary Babbitt mentioned Ickes to Eckstein during their July 14, 1995 meeting, Secretary Babbitt testified that Ickes was the White House official who was the “general point of contact” on Department of Interior matters, and thus Ickes was a shorthand way for him state that the White

House expected the Department to decide sensitive matters promptly.<sup>79</sup> Also, prior to the July 14, 1995, decision in this matter, Secretary Babbitt testified that he had no knowledge of any contact by his staff with White House personnel concerning the Hudson casino.<sup>80</sup> In addition, Secretary Babbitt testified that no one told him about the specific campaign contributions made by Indian tribes to Democratic candidates or party organizations.<sup>81</sup>

John J. Duffy, Counselor to the Secretary, testified that he had no recollection of having contact with Ickes or with anyone in Ickes's office concerning the Hudson matter.<sup>82</sup> Duffy has no recollection of speaking with Fowler or any DNC staff on the Hudson matter, nor did he ever hear about any Interior employees speaking with Fowler or DNC staff concerning this issue.<sup>83</sup> Sibbison, the Special Assistant to Secretary Babbitt, does not recall speaking with Fowler or hearing about anyone speaking with the DNC or the Clinton campaign about the Hudson issue.<sup>84</sup>

George Skibine, the director of the Indian Gaming Management staff, stated that Heather Sibbison never told him about inquiries she received from the White House on the matter. Moreover, when Skibine was shown Ms. O'Connor's memo concerning her conversation with Sibbison, Skibine agreed that the opposition of Wisconsin officials based upon detriment to the Hudson-area community and the opposition of the Minnesota Democratic congressional delegation due to impact on nearby tribes' on-reservation gaming facilities were integral reasons for the denial of the application.<sup>85</sup>

Therefore, aside from the contacts between Sibbison and either Jennifer O'Connor or White House intern David Meyers, there is no evidence that Interior officials had any direct contacts with Ickes or anyone else at the White House concerning the Hudson casino proposal.

### **ECKSTEIN'S ACCESS TO INTERIOR OFFICIALS**

According to the evidence collected by the Committee, Eckstein, unlike Patrick O'Connor and other lobbyists hired by the opposing tribes, was the only lobbyist who spoke extensively to Secretary Babbitt, to John Duffy, the secretary's counselor for Indian affairs, and to career Indian Gaming Management Staff employees concerning the Hudson matter.

#### **Eckstein's Telephone Contacts with Secretary Babbitt**

Eckstein testified that he had one and perhaps two or three telephone conversations with Secretary Babbitt of a substantive nature after he was retained by the casino partnership in April 1995, and that he and Secretary Babbitt discussed the grassroots opposition in the Hudson area, the opposition by elected officials in Wisconsin and Minnesota, and the concerns of nearby Indian tribes in Wisconsin and Minnesota.<sup>86</sup> Eckstein testified that he met with Secretary Babbitt at the Interior Department, either around May 17 or shortly after Memorial Day, 1995. He stated that they met for about a half-hour, after which time Secretary Babbitt gave him a ride to his office, and they discussed many of the same issues they had gone over in telephone conversations.<sup>87</sup>

### **The Tribal Applicants' May 1995 Meeting with Interior Officials**

Eckstein testified that Secretary Babbitt made it clear in their telephone conversations that John Duffy was his counselor in charge of monitoring Indian gaming issues. Eckstein thereafter met on May 17, 1995, with Duffy and George Skibine, the director of the Indian Gaming Management Staff. In addition to Eckstein, Jim Moody, a former U.S. representative from Wisconsin, attended on behalf of the partnership, as did Fred Havenick, the owner of Galaxy Casinos, Inc., and representatives of the three tribes involved in this casino partnership.

According to Eckstein, Secretary Babbitt's office sent a letter to Senator Tom Daschle on June 7, 1995, regarding Moody and Havenick's continuing requests to meet with Secretary Babbitt on this issue. The letter offers a revealing glimpse of Interior's efforts to listen to the concerns of Eckstein's clients and Eckstein's aggressiveness in seeking to lobby Interior officials on behalf of his clients:

[T]he Department already has afforded Mr. Moody and Mr. Havinick [sic] ample opportunity to express their views. John [Duffy] personally met with Mr. Moody and Mr. Havinick [sic] on this issue, and indeed, went out of his way to accommodate them. On the morning of May 17, 1995, they arrived at the Department with no scheduled meeting. John offered to carve out a fifteen-minute block of time in an already over-booked morning to see them, and arranged to have George Skibine, Director of the Indian Gaming Management Staff, be present. John allowed Mr. Moody and Mr. Havinick [sic] to continue the meeting for a full forty-five minutes, even though allowing this extension forced leaders from another tribe, who had a scheduled appointment, to wait half an hour beyond their meeting time.

After Mr. Moody and Mr. Havinick [sic] left John's office, they continued the unscheduled meeting for nearly two additional hours with George Skibine and his staff. Additionally, as recently as last week, Mr. Moody and Mr. Havinick [sic] met again with George.<sup>88</sup>

### **Eckstein's July 14 Meeting with Secretary Babbitt**

Eckstein called Secretary Babbitt on July 11, 1995, to request another opportunity to plead his clients' case since he had heard rumors that the Department was about to make a decision.<sup>89</sup> Secretary Babbitt called Duffy to ask him to meet with Eckstein again. In his deposition, Duffy recalled, "I said we are pretty far along and I think there are very good reasons to get this out. And I think he [Secretary Babbitt] said, 'Well, I would like you to make an effort to meet with Paul and explain the decision to him and hear what he has to say.' And I think that is consistent with the Secretary's desire to make sure that all sides are heard."<sup>90</sup>

Duffy then called Eckstein and they agreed to meet on the morning of Friday, July 14.<sup>91</sup> The draft decision was finalized during that week.<sup>92</sup> When Eckstein and Moody presented their

arguments to Duffy on the morning of July 14, Duffy said he felt that they simply repeated the arguments that they had raised in the May 17 meeting.<sup>93</sup> He said he told them the decision would be issued denying the application.<sup>94</sup> Duffy explained the key reasons as listed in the decision letter issued by Michael Anderson: (i) the long distance of the applicant tribes from Hudson; (ii) the opposition of the local community, as represented by the statements of opposition of their local, state and federal representatives; (iii) and the opposition of the nearby Indian tribes with on-reservation casinos, specifically the St. Croix Chippewa in Wisconsin.<sup>95</sup>

After Duffy informed Eckstein that the Department was planning to deny the casino request, Eckstein contacted Secretary Babbitt's office and requested an immediate, one-on-one meeting with Secretary Babbitt.<sup>96</sup> Secretary Babbitt agreed to Eckstein's request and met with him later that day for approximately a half-hour.<sup>97</sup> During that meeting, Secretary Babbitt did not grant Eckstein's requests for additional delay in the issuance of the Department's decision.<sup>98</sup>

### **THE MERITS OF INTERIOR'S DECISION ON THE HUDSON APPLICATION**

Secretary Babbitt, John Duffy, Heather Sibbison, and Michael Anderson all testified that the denial of the Hudson application was consistent with a departmental policy that casino projects not be approved if the applicant tribe's current reservation is located far from the proposed site, the host community is not supportive of the project, and the project would have a detrimental impact on tribes whose reservations were near the proposed site.<sup>99</sup> George Skibine, who wrote the draft letter denying the application,<sup>100</sup> testified that, with the exception of Interior's reliance on the applicant tribes' distance from Hudson, he was completely supportive of the reasoning and language of the July 14, 1995, final decision letter.<sup>101</sup> Contrary to assertions in the October 30, 1997, hearing, George Skibine, the career civil servant charged with recommending a decision agreed that the Hudson casino application should be denied.<sup>102</sup> The Minority's formal request to depose Skibine before the Committee's October 30 hearing was declined by the Majority without explanation, but it later took place, at the Minority's request, on November 17, 1997.<sup>103</sup>

### **The Hudson Casino Would Have Been Detrimental to the Surrounding Community**

As Secretary Babbitt emphasized in his testimony before the Committee,<sup>104</sup> the Indian Gaming Regulatory Act<sup>105</sup> requires that, when Indian tribes request that Interior acquire land "in trust" on the Tribes' behalf for gaming purposes, the Secretary must find that the new casino would not be detrimental to the surrounding community, following consultation with state and local officials, including nearby Indian tribes. Even after the secretary makes that determination, the land cannot be taken into trust until "the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination."<sup>106</sup> The legal standard for taking off-reservation land into trust for gaming purposes is much more rigorous than when the land is within or contiguous to an existing reservation.<sup>107</sup>

At the beginning of his tenure as Secretary of the Interior, Secretary Babbitt made his

position absolutely clear.<sup>108</sup> He favored on-reservation Indian casinos without restrictions by host states but would endeavor to keep Indian gaming on existing reservation lands unless an off-reservation casino was clearly supported by the host community.<sup>109</sup> When the Mayor and the City Council of Detroit publicly supported the “Greektown” casino proposed by the Sault Ste. Marie Chippewa Tribe of Michigan, Secretary Babbitt, after a staff determination that the casino would not be detrimental to the Detroit community, sent a letter requesting the concurrence of Michigan Governor John Engler to the proposed land acquisition.<sup>110</sup> Similarly, in 1997, both the Northwest Regional Office of the Bureau of Indian Affairs (“BIA”) and the Washington-based Indian Gaming Management Staff performed an extensive canvassing of opinions in nearby towns and tribal governments before Interior determined that an off-reservation casino proposed by the Kalispel Indians near Spokane, Washington, would not be detrimental to the surrounding community, and therefore requested that Governor Gary Locke concur in this determination.<sup>111</sup>

### **The Surrounding Communities Opposed the Hudson Casino Proposal**

In stark contrast to the Michigan and Washington state applications, extensive public comment by private citizens, elected officials and leaders of Indian tribes located within a 50-mile radius of Hudson indicated that the proposed casino would have caused social, economic, and environmental harm to the surrounding communities. In early 1995, Interior received complaints from Congressmen in both Wisconsin and Minnesota that the Minneapolis regional office of the Bureau of Indian Affairs had failed to consider adequately the detriment the casino would cause to the surrounding community.<sup>112</sup> Even in the June 8, 1995, memorandum of Tom Hartman,<sup>113</sup> in which the economic analyst on the Indian gaming management staff argued that the Hudson casino proposal would not be detrimental to the surrounding community, the author admitted the following important fact:

There has been no consultation with the State of Wisconsin. . . . On January 2, 1995, the Minneapolis Area Director was notified by the Acting Deputy Commissioner for Indian Affairs that consultation with the State must be done at the Area level prior to submission of the Findings of Fact on the transaction. As of this date, there is no indication that the Area Director has complied with this directive for this transaction.<sup>114</sup>

This failure to consult with the state was significant, because consultation would have revealed that a large majority of Wisconsin voters, including 65 percent in St. Croix County, had voted “Yes” in a 1993 statewide referendum proposing a state constitutional amendment to restrict the growth of casino gambling in the state. In October 1994, while running for reelection as Wisconsin’s governor, Tommy Thompson promised “I’m not in any way going to expand Indian gambling beyond what it is today.”<sup>115</sup> An aide to Thompson confirmed that the governor’s position meant that Thompson had “shut the door on” the Hudson casino proposal.<sup>116</sup> Even after the election, when asked whether he supported the expansion of gaming to raise funds for a new stadium for the Milwaukee Brewers baseball team, Thompson stated the following: “There is no expansion of Indian gaming. How many times do I have to announce it?”<sup>117</sup> In addition, the Wisconsin State Senate’s Republican Majority Leader, Michael Ellis, had announced his



opposition to the Hudson casino in July 1994, as did the State Senate's Minority Democratic Leader, Bob Jauch; Wisconsin's Democratic Attorney General, James Doyle, wrote Secretary Babbitt in opposition in April 1995; and the Republican State Assemblywoman from Hudson, Sheila Harsdorf, led a coalition of 29 Wisconsin Assembly members who wrote to Secretary Babbitt and Thompson in March 1995 to express their joint opposition to the Hudson proposal as detrimental to both the Hudson area and the entire state of Wisconsin.<sup>118</sup>

In addition, the Congressman from the Hudson area, Republican Steve Gunderson, forwarded to Interior evidence that his constituents in the Hudson area widely opposed the casino. For example, he sent a resolution in opposition passed on December 12, 1994 by the Town of Troy which surrounds the St. Croix Meadows Greyhound track on three sides;<sup>119</sup> a resolution in opposition passed by the City of Hudson on February 6, 1995; and a full-page advertisement signed by 25 Hudson-area business leaders opposing the casino because of specific fiscal and social damage to the Hudson-area community.<sup>120</sup> Based upon the detrimental effects to his district, and the dangerous national precedent of approving an off-reservation casino over vigorous opposition of the local community, Gunderson wrote to Secretary Babbitt on April 28, 1995 and urged the Department to deny the Hudson application.<sup>121</sup>

Gunderson, who retired from the House of Representatives at the end of the 104th Congress, expressed his recollection of the Hudson casino issue in a letter to the Committee dated October 19, 1997:

The Committee should be aware of significant and intense opposition to any extension of gambling in Wisconsin during this time. . . . I know of no legislator in the area who endorsed the potential casino -- Republican or Democrat. . . . It is important for the Committee to understand the depth of feeling in opposition to the casino at that time. It is also my impression that the opposition would be greater today. The only merit in expanding the reservation for casino purposes was to try and salvage something for the huge investment in the dog track facility.<sup>122</sup>

### **Interior Staff Recommended Denial**

The Indian Gaming Management Staff ("IGMS") also identified numerous inadequacies in the environmental assessment that had been prepared for the casino, particularly concerning the St. Croix National Scenic Riverway located near the greyhound track, raising another area of concern that the casino would cause specific harm to the Hudson area community. In January 1995, prior to George Skibine's assignment as director of the IGMS, an IGMS staff member created an initial "Findings of Fact" document analyzing the Hudson casino application. Referring to and attaching that document, IGMS Environmental Protection Specialist Edward S. ("Ned") Slagle, a career civil servant, wrote Skibine a memorandum expressing his views regarding supplementary materials received by IGMS between January and May 1995, including the following:

The main additional environmental information which was provided in the supplemental documents concerned the St. Croix Scenic Riverway. The fact that the nearby riverway has received a special designation was not revealed in the environmental document which had been submitted in connection with the other documents in support of the proposed casino. The potential impact, if any, of the proposed casino on the riverway was also not adequately addressed. These deficiencies augment the many others which were described earlier in the environmental analysis sections of the Findings of Fact.<sup>123</sup>

With regard to the other deficiencies, Slagle had noted in the January 1995 document,

The environmental impacts of this proposed project are analyzed insufficiently, and the plans for the reduction and mitigation of adverse impacts are insufficient. The Environmental Assessment (EA) of this action is largely irrelevant because the existing conditions are inadequately described. The EA is seven years old, for a different proposed project, and for an environment that has changed drastically during the intervening years.<sup>124</sup>

In addition, in a letter to Skibine, four alderman, and the mayor of Hudson, pointed to detrimental impacts to their community's environment that would be caused by the large increase in attendance at St. Croix Meadows accompanying a casino. Among those documented detriments were "harm to the City's waste water treatment" and "problems with solid waste due to the fact that the county's incineration facility is permanently closed."<sup>125</sup> The National Parks and Conservation Association also wrote a letter to Wisconsin Governor Thompson and Secretary Babbitt expressing its concern about the likely detriment to the St. Croix National Scenic Riverway and the watershed surrounding that waterway.<sup>126</sup>

With regard to these comments, Skibine testified, "I certainly agreed that the EA was deficient because the impact on the St. Croix River Waterway was not addressed."<sup>127</sup> Skibine testified that the environmental impact of the project was a factor in his consideration of this application.<sup>128</sup> Thus, based upon Slagle's written comments on the Hudson application, it is inaccurate to state that the Indian Gaming Management Staff supported this application.

### **The Administrative Record**

Skibine testified that in June 1995 he read the entire record on the Hudson casino proposal, including the staff memos written by Hartman and Slagle, and discussed the matter with other staff members such as Paula Hart, Leroy Chase, and Larry Scrivner.<sup>129</sup> Following this review, Skibine drafted a letter denying the application based upon the secretary's discretionary authority under Section 5 of the Indian Reorganization Act of 1934 ("IRA").<sup>130</sup> The letter based this rejection primarily upon the specific opposition of the neighboring communities of Hudson and Troy, Wisconsin, which were based upon "1) increased law enforcement expenses due to potential exponential growth in crime and traffic congestion; 2) testing [sic] waste water treatment facilities up to remaining operational capacity; 3) problems with solid waste; 4) adverse

effect on the communities' future residential, industrial and commercial development plans; and 5) difficulties for current Hudson businesses to find and retain employees." Skibine's letter referred to the objections of both Wisconsin's St. Croix Chippewa and Minnesota's Shakopee Mdewakanton Sioux as neighboring Indian tribes with concerns about the "potential harmful effects of this acquisition on their gaming establishments." Skibine also referred to the objections of a number of elected officials, including the state and United States representatives from the Hudson area. Finally, the location of the proposed casino within a half-mile from the St. Croix National Scenic Riverway was noted as a potentially harmful impact in this letter. Skibine testified that this letter was based upon the record compiled in the case, and there were no other matters that he could think of that were important in his decision-making process.<sup>131</sup>

### **Allegations of Timing and Political Pressure**

An e-mail from Skibine to the Indian Gaming Management Staff dated July 8, 1995, reveals that Skibine edited the Hudson letter, "per Duffy and Heather's instructions," and that he wanted it brought up to Heather Sibbison first thing Monday morning (July 10, 1995). According to the e-mail, this was because "[t]he Secretary wants this to go out ASAP because of Ada's impending visit to the Great Lakes Area."<sup>132</sup> Ada Deer, the Assistant Secretary for Indian Affairs, was scheduled to visit Wisconsin later in July. A note in Interior's files from Sibbison to Tona LaRocque of the Indian Gaming Management Staff, dated July 10, 1995, stated, "Please let me know as soon as the letters are signed. They should be faxed out to the Tribes, so that they will have some time to digest the information before Ada arrives later in the week."<sup>133</sup> Skibine verified that he and Deputy Assistant Secretary for Indian Affairs Michael Anderson discussed the revised decision letter together on either July 10 or July 11, while they were out of town on other business, and that Anderson wanted some changes made to the letter.<sup>134</sup>

While Anderson did testify that he was asked by Deer's special assistant, Michael Chapman, to sign the letter by July 14, he stated that this request likely was made because he was going to be out of the office until July 24, and the matter was clearly ripe for decision.<sup>135</sup> As indicated by the internal memoranda of the Department of Interior dated July 8 and July 10, 1995 as well as Eckstein's own testimony that he had heard "rumors that the application was going to be denied," it clearly was in the best interests of the department that the decision be issued prior to a visit to a Wisconsin "pow-wow" by Deer on July 15 and 16, 1995, so that she would not be bombarded with further lobbying efforts and inter-tribal arguments on the matter.

### **Interior's Final Decision-Maker Acted on the Merits**

Anderson, who had the final decision authority, also testified about the absence of political considerations from his decision-making process.<sup>136</sup> Anderson said that he had reviewed the relevant legal standards and the analyses of the staff (which he described as the "driving force" behind the decision), and he felt that he had a "competent understanding of what the facts were."<sup>137</sup> Anderson's decision, however, was not influenced by any conversations with Secretary Babbitt concerning this matter. Anderson testified that, prior to making the decision denying the Hudson casino proposal, he had never discussed the matter with Secretary Babbitt and, indeed,

had “never heard the Secretary’s position stated at all on this matter.”<sup>138</sup> This was confirmed by Secretary Babbitt himself, who testified that he “did not personally make the decision to deny the Hudson application, nor did I participate in Department deliberations relating to that application.”<sup>139</sup> Moreover, Anderson testified that he was not aware of the status reports that had been requested from Interior by Ickes’s assistant.<sup>140</sup> Likewise, Anderson said that he had no knowledge, direct or indirect, of any contacts between the DNC and Interior.<sup>141</sup>

## **CONCLUSION**

It is clear from the evidence in the record, including the testimony taken by this Committee, that the decision by the Department of the Interior to deny the Hudson casino application was based upon legitimate concerns about detriment to the communities surrounding the Hudson greyhound track and to neighboring Indian communities with pre-existing, on-reservation casinos. The bipartisan opposition from federal, state, and local elected officials demonstrates that approval of the Hudson casino project would have been contrary to the best interests of the surrounding communities. Allegations that the White House and the DNC caused the Interior Department to deny this application are unsupported by the evidence before this Committee.

1. Application To The Court Pursuant to 28 U.S.C. §592(c)(1) For The Appointment Of An Independent Counsel, (D.C. Cir. Feb. 11, 1998), p. 1.
2. Exhibit 1588: Affidavit of Paul Eckstein.
3. Exhibit 1578: Letter from Senator McCain to Secretary Babbitt re: Wall Street Journal article, 7/19/96; Exhibit 1582: Letter from Senator McCain to Harold Ickes re: Wall Street Journal article, 7/19/96 [EOP 64386]; Exhibit 1584: Letter from Senator McCain to President Clinton re: Wall Street Journal article, 7/19/96, [EOP 64390].
4. Exhibit 1578: Letter from Senator McCain to Secretary Babbitt re: Wall Street Journal article, 7/19/96.
5. Exhibit 1580: Letter from Secretary Babbitt to Senator McCain re: Wall Street Journal article, 8/30/96.
6. Exhibit 1560: Letter from Patrick O'Connor to Harold Ickes re: Hudson casino proposal, 5/8/95. [EOP 64262-3]
7. Exhibit 1560: Letter from Patrick O'Connor to Harold Ickes re: Hudson casino proposal, 5/8/95. [EOP 64262-3]
8. Paul Eckstein deposition, 9/30/97, pp. 59-60.
9. Paul Eckstein deposition, 9/30/97, p. 53.
10. Exhibit 1587: Letter from Secretary Babbitt to Chairman Thompson, 10/10/97.
11. Secretary Babbitt, 10/30/97 Hrg., pp. 116-117.
12. Secretary Babbitt, 10/30/97 Hrg., p. 185.
13. Secretary Babbitt, 10/30/97 Hrg., p. 137.
14. Secretary Babbitt, 10/30/97 Hrg., p. 138.
15. Secretary Babbitt, 10/30/97 Hrg., pp. 126-127.
16. Secretary Babbitt, 10/30/97 Hrg., pp. 187-188.
17. Exhibit 1580: Letter from Secretary Babbitt to Senator McCain re: Wall Street Journal article, 8/30/96.
18. Exhibit 1587: Letter from Secretary Babbitt to Chairman Thompson, 10/10/97.

19. Secretary Babbitt, 10/30/97 Hrg., p. 136.
20. Secretary Babbitt, 10/30/97 Hrg., p. 130.
21. Exhibit 1588: Affidavit of Paul F. Eckstein.
22. Exhibit 1588: Affidavit of Paul F. Eckstein.
23. Paul Eckstein, 10/30/97 Hrg., pp. 93-96.
24. Senator Durbin, 10/30/97 Hrg., pp. 91-92.
25. Paul Eckstein deposition, 9/30/97, p. 63.
26. Paul Eckstein deposition, 9/30/97, p. 105; Paul Eckstein, 10/30/97 Hrg., p. 65.
27. Paul Eckstein deposition, 9/30/97, p. 105; Paul Eckstein, 10/30/97 Hrg., p. 65.
28. Wall Street Journal, 7/12/96; Wisconsin State Journal, 7/28/96; Wisconsin State Journal, 4/1/97; Wisconsin State Journal, 8/16/97.
29. Wisconsin State Journal, 10/8/97.
30. Staff interview with George Newago, 10/29/97.
31. Senator Torricelli, 10/30/97 Hrg., pp. 102-103.
32. Application To The Court Pursuant to 28 U.S.C. §592(c)(1) For The Appointment Of An Independent Counsel, (D.C. Cir. Feb. 11, 1998), p. 7.
33. Application To The Court Pursuant to 28 U.S.C. §592(c)(1) For The Appointment Of An Independent Counsel, (D.C. Cir. Feb. 11, 1998), p. 7.
34. Application To The Court Pursuant to 28 U.S.C. §592(c)(1) For The Appointment Of An Independent Counsel, (D.C. Cir. Feb. 11, 1998), pp. 7-8.
35. Paul Eckstein deposition, 9/30/97, p. 90.
36. Paul Eckstein deposition, 9/30/97, p. 90.
37. Paul Eckstein deposition, 9/30/97, p. 115.
38. Exhibit 2512M: Patrick O'Connor deposition in Four Feathers Casino Joint Venture Partnership v. City of Hudson, Case No. 95-CV-540, St. Croix County., WI Circuit Court, 4/18/97, pp. 107-108.
39. Secretary Babbitt, 10/30/97 Hrg., p. 150-151.

40. Secretary Babbitt, 10/30/97 Hrg., p. 150.
41. John Duffy deposition, 9/29/97, pp. 79-80.
42. Exhibit 2515M: Letter from Sue Ellen Sloca, Office of the Secretary of the Interior, FOIA officer, to Glenn R. Simpson and Jill Abramson, Wall Street Journal, 4/25/97.
43. Heather Sibbison deposition, 9/26/97, pp. 50.
44. Tom Collier deposition, 9/29/97, pp. 11-12.
45. Tom Collier deposition, 9/29/97, pp. 11-13.
46. Exhibit 2512M: Patrick O'Connor deposition in Four Feathers Casino Joint Venture Partnership v. City of Hudson, Case No. 95-CV-540, St. Croix County, WI Circuit Court, 4/18/97, pp. 107-108.
47. Harold Ickes deposition, 9/22/97, p. 34.
48. Exhibit 1559: Memorandum from Don Fowler to Harold Ickes re: Indian Gaming Issue, 5/5/95. [DNC 3245524].
49. Exhibit 1559: Memorandum from Don Fowler to Harold Ickes re: Indian Gaming Issue, 5/5/95. [DNC 3245524]
50. Exhibit 1560: Letter from Patrick O'Connor to Harold Ickes re: Hudson casino proposal, 5/8/95. [EOP 64262-3]
51. Chairman Thompson, 10/30/97 Hrg., p. 7, referencing Exhibit 1592: Tom Schneider deposition, 9/9/97, taken in Four Feathers Casino Joint Venture Partnership v. City of Hudson, Case No. 95-CV-540, St. Croix County, WI Circuit Court.
52. Exhibit 1557: Entries from Patrick O'Connor's datebook. [OC 4, 31, 49, 62, 68, 69, 73, 74, 76-81, 83-89& 93]
53. Exhibit 1557: Entries from Patrick O'Connor's datebook. [OC 80].
54. Exhibit 1557: Entries from Patrick O'Connor's datebook. [OC 83].
55. Exhibit 1597: Memo from Loretta Avent to Harold Ickes re: call from Bruce Lindsey concerning O'Connor, 4/24/95. [EOP 069071]
56. Jennifer O'Connor deposition, 10/6/97, pp. 37-38.
57. Harold Ickes deposition, 9/22/97, pp. 35-36, 38-39.

58. Jennifer O'Connor deposition, 10/6/97, pp. 39-40.
59. Jennifer O'Connor deposition, 10/6/97, p. 40.
60. Jennifer O'Connor deposition, 10/6/97, pp. 40-41.
61. Jennifer O'Connor deposition, 10/6/97, p. 57, referencing Exhibit 1562: Memo from Jennifer O'Connor to Harold Ickes re: "Indian Gaming in Wisconsin," 5/18/95. [EOP 64394]
62. Exhibit 1562: Memo from Jennifer O'Connor to Harold Ickes re: "Indian Gaming in Wisconsin," 5/18/95. [EOP 64394]
63. Exhibit 1566: Fax from Patrick O'Connor to Harold Ickes/John Sutton, 6/1/95. [EOP 64251].
64. Exhibit 1566: Fax from Patrick O'Connor to Harold Ickes/John Sutton, 6/1/95. [EOP 64251].
65. Jennifer O'Connor deposition, 10/6/97, pp. 66-67.
66. Jennifer O'Connor deposition, 10/6/97, p. 67.
67. Jennifer O'Connor deposition, 10/6/97, p. 66.
68. Jennifer O'Connor deposition, 10/6/97, p. 53.
69. Exhibit 1599: Memo from David Meyers, White House intern, to Jennifer O'Connor, special assistant to Harold Ickes re: "Wisconsin Dog Track," 6/6/95. [EOP 64250]
70. Jennifer O'Connor deposition, 10/6/97, p. 56.
71. Exhibit 1569: Fax from Jennifer O'Connor, aide to Harold Ickes, to Heather Sibbison, special assistant to Interior counselor John Duffy, asking for a draft response to an enclosed 6/12/95 letter from Minnesota's Democratic congressional delegation expressing opposition to the Hudson casino plan, 6/26/95. [02893, EOP 064257-8].
72. Exhibit 1569: Fax from Jennifer O'Connor, aide to Harold Ickes, to Heather Sibbison, special assistant to Interior counselor John Duffy, asking for a draft response to an enclosed 6/12/95 letter from Minnesota's Democratic congressional delegation expressing opposition to the Hudson casino plan, 6/26/95. [02893, EOP 064257-8].
73. Exhibit 1570: Fax from Heather Sibbison, special assistant to Interior counselor John Duffy, to Jennifer O'Connor, aide to Harold Ickes, enclosing draft responses to a 6/12/95 letter from Minnesota's Democratic congressional delegation expressing opposition to the Hudson casino plan, 6/27/95. [EOP 64253-6].



74. Exhibit 1570: Fax from Heather Sibbison, special assistant to Interior counselor John Duffy, to Jennifer O'Connor, aide to Harold Ickes, enclosing draft responses to a 6/12/95 letter from Minnesota's Democratic congressional delegation expressing opposition to the Hudson casino plan, 6/27/95. [EOP 64253-6].

75. Exhibit 1570: Fax from Heather Sibbison, special assistant to Interior counselor John Duffy, to Jennifer O'Connor, aide to Harold Ickes, enclosing draft responses to a 6/12/95 letter from Minnesota's Democratic congressional delegation expressing opposition to the Hudson casino plan, 6/27/95. [EOP 64253-6].

76. Exhibit 1570: Fax from Heather Sibbison, special assistant to Interior counselor John Duffy, to Jennifer O'Connor, aide to Harold Ickes, enclosing draft responses to a 6/12/95 letter from Minnesota's Democratic congressional delegation expressing opposition to the Hudson casino plan, 6/27/95. [EOP 64253-6].

77. Jennifer O'Connor deposition, 10/6/97, pp. 49-51, referencing Exhibit 1570, Fax from Heather Sibbison, special assistant to Interior counselor John Duffy, to Jennifer O'Connor, aide to Harold Ickes, enclosing draft responses to a 6/12/95 letter from Minnesota's Democratic congressional delegation expressing opposition to the Hudson casino plan, 6/27/95. [EOP 64253-6]

78. Secretary Babbitt, 10/30/97 Hrg., p. 147-148.

79. Secretary Babbitt, 10/30/97 Hrg., p. 121.

80. Secretary Babbitt, 10/30/97 Hrg., p. 119-120.

81. Secretary Babbitt, 10/30/97 Hrg., p. 121.

82. Exhibit 2510M: John Duffy deposition, 9/29/97, p. 57.

83. John Duffy deposition, 9/29/97, pp. 68-71.

84. Heather Sibbison deposition, 9/26/97, pp. 42 & 44.

85. George Skibine deposition, 11/17/97, p. 48-50.

86. Paul Eckstein deposition, 9/30/97, pp. 22-25.

87. Paul Eckstein deposition, 9/30/97, p. 26-28.

88. George Skibine deposition, 11/17/97, pp. 54-55.

89. Paul Eckstein deposition, 9/30/97, p. 43.

90. John Duffy deposition, 9/29/97, p. 107.

91. Paul Eckstein deposition, 9/30/97, p. 44-45.
92. John Duffy deposition, 9/29/97, pp. 107.
93. John Duffy deposition, 9/29/97, p. 107.
94. John Duffy deposition, 9/29/97, p. 105-107.
95. John Duffy deposition, 9/29/95, p. 104-105.
96. Paul Eckstein deposition, 9/30/97, p. 51.
97. Paul Eckstein deposition, 9/30/97, p. 52.
98. Paul Eckstein deposition, 9/30/97, p. 53.
99. Secretary Babbitt, 10/30/97 Hrg., pp. 120-122; John Duffy deposition, 9/29/96, pp. 23-25; Heather Sibbison deposition, 9/26/95, pp. 24-26; Michael Anderson deposition, 9/19/96, pp. 18-20, 43-45.
100. Exhibit 2508M: Draft letter from Interior Assistant Secretary for Indian Affairs Ada Deer to tribal leaders denying the Hudson casino request, 6/29/95. [3211-14]
101. George Skibine deposition, 11/17/95, pp. 152-153.
102. George Skibine deposition, 11/17/95, pp. 152-153.
103. "Silent Witness: Senate investigators never called the one man who could clear up the Babbitt case," Washington Monthly, December 1997; "The Non-Case Against Bruce Babbitt," Wall Street Journal, 12/4/97.
104. Secretary Babbitt, 10/30/97 Hrg., p. 121.
105. 25 U.S.C. § 2719 (1997).
106. 25 U.S.C. § 2719(b)(1)(A).
107. 25 U.S.C. § 2719(a)(1) (gaming is not to be conducted by tribes on land acquired in trust by the Department of Interior after 1988, unless the land is within or contiguous to the tribes' existing reservation.)
108. Indian Country Today, 2/11/93 (Secretary Babbitt tells group of western governors that Indian tribes should have some degree of latitude from state gaming laws on federally recognized reservation bases); The Economist, 5/29/93 (Secretary Babbitt negotiated an agreement in his native Arizona between tribal and state government that the tribes' casino gambling would be restricted to their reservations).

109. Indian Country Today, 2/11/93 (Secretary Babbitt tells group of western governors that Indian tribes should have some degree of latitude from state gaming laws on federally recognized reservation bases); The Economist, 5/29/93 (Secretary Babbitt negotiated an agreement in his native Arizona between tribal and state government that the tribes' casino gambling would be restricted to their reservations).

110. George Skibine deposition, 11/17/97, p. 72.

111. George Skibine deposition, 11/17/97, pp. 74-75.

112. For example, Rep. Steve Gunderson, then-U.S. Representative for the Hudson area of western Wisconsin, sent letters to Secretary Babbitt (Exhibits 2522M, 2523M) asking about the truth of reported allegations that the Interior's Minneapolis area office had recommended approval of the trust application in the face of local opposition. Rep. Gunderson enclosed expressions of opposition from within his district, of which the following comment from Hudson resident Bob Bastian is representative:

With 3200 signatures against the proposal, the majority of the business community, and all the Indian tribes within a 100 miles of here dead set against [the proposed casino in Hudson], the BIA in Minneapolis in all its bureaucratic wisdom decided that wasn't sufficient opposition and OK'd the proposal.

We've been through this before with overwhelming opposition (2-1 ratio) in 1988-89 we got the dog track shoved down our throats. Now it's happening again. When does the majority's will ever count anymore other than in an election?

113. Exhibit 1567: Draft memo from Tom Hartmann, Indian gaming management staff, Interior Department, to George Skibine, director, Indian gaming management staff, Interior Department re: Hudson casino trust application, 6/8/95. [3194-3209]

114. Exhibit 1567: Draft memo from Tom Hartmann, Indian gaming management staff, Interior Department, to George Skibine, director, Indian gaming management staff, Interior Department re: Hudson casino trust application, 6/8/95. [3194-3209]

115. Exhibit 2519M: St. Paul Pioneer Press, 10/4/94.

116. Exhibit 2519M: St. Paul Pioneer Press, 10/4/94.

117. Associated Press, 2/7/95. Beginning in early 1994, Gov. Thompson had clearly and publicly expressed his opposition to any expansion of gaming, including the Hudson proposal. Exhibit 2519M: St. Paul (MN) Pioneer Press, 10/4/94.

118. Exhibit 2524M: several letters of opposition from state and federal elected officials in Wisconsin.

119. Exhibit 2522M: Letter from Rep. Gunderson to Secretary Babbitt re: local opposition to Hudson casino proposal, 1/25/95.
120. Exhibit 2523M: several letters of opposition from state and federal elected officials in Wisconsin.
121. Exhibit 2524M: several letters of opposition from state and federal elected officials in Wisconsin.
122. Exhibit 2521M: Letter from Steve Gunderson, former U.S. Representative from Hudson, Wisconsin, to Ranking Minority Member Glenn re: local opposition to Hudson casino proposal, 10/29/97.
123. George Skibine deposition, 11/17/97, Exhibit 10.
124. George Skibine deposition, 11/17/97, Exhibit 10.
125. George Skibine deposition, 11/17/97, p. 60.
126. George Skibine deposition, 11/17/97, Exhibit 9.
127. George Skibine deposition, 11/17/97, p. 43.
128. George Skibine deposition, 11/17/97, p. 39-40.
129. George Skibine deposition, 11/17/97, pp. 61-65.
130. 25 U.S.C. 465; George Skibine deposition, 11/17/97, p. 65.
131. George Skibine deposition, 11/17/97, pp. 66-67.
132. E-mail from George Skibine, director of the Indian gaming management staff, to Miltona R. Wilkins, Tom Hartman, Paula Hart, and Tona LaRocque, 7/8/95.
133. Department of the Interior Central Office Routing Slip, 7/8/95.
134. George Skibine deposition, 11/17/97, p. 68.
135. Michael Anderson deposition, 9/19/97, pp. 58-59.
136. Michael Anderson deposition, 9/19/97, p. 43-46.
137. Michael Anderson deposition, 9/26/97, p. 67-68.
138. Michael Anderson deposition, 9/19/97, p. 40-41.
139. Secretary Babbitt, 10/30/97 Hrg, p. 117.

140. Michael Anderson deposition, 9/19/97, p. 48.

141. Michael Anderson deposition, 9/19/97, p. 48-49.